IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 33560 of 2007(T)

PETITIONERS:
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1. SOBHANA, W/O. GOPINADHAN,
AGED 39 YEARS, PLAMOOTTIL HOUSE, CHIRATTAPALAM, ADHIKARIVALAPPIL, FORTCOCHI VILLAGE, KOCHI TALUK, AT PRESENT RESIDING AT MADAVANA HOUSE,KATTAMITTAM PADAM, CHERUPUZHA KARA, VAZHAKKALA VILLAGE, KANAYANNOOR TALUK.

2. K.V. SARADA, W/O. RAVUNNI,
AGED 61 YEARS, MADAVANA HOUSE,KATTAMITTAM PADAM, CHERUPUZHA KARA, VAZHAKKALA VILLAGE,KANAYANNOOR TALUK.

BY ADV. SRI.BIJU ABRAHAM

RESPONDENTS:
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1. P.P. ALEX, S/O. POTHAN,
AGED 42 YEARS, POOCHANTHALIL HOUSE,CHENGALAM DESOM CHENGALAM VILLAGE, KOTTAYAM TALUK AT PRESENT RESIDING AT POOCHANTHALIL HOUSE, ELAVAKATTUNAGAR, PAREKKATTULANE, PADAM ROAD, THRIKKAKARA P.O., PIN-682 021.

2. ALAHABAD BANK,
M.G. ROAD BRANCH, ERNAKULAM, REPRESENTED BY ITS BRANCH MANAGER.

BY ADV. SRI.DINESH R.SHENOY
SRI.P.JACOB VARGHESE, SC BANK
SRI.VARUGHESE M EASO
SRI.VIVEK VARGHESE P.J.
SMT.NISHA JOHN
SMT.ELIZEBETH MEERA
SRI.P.J.VINOD JOSEPH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 33560 OF 2007 T
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Dated this the 16th day of November, 2007

J U D G M E N T

The prayer made in this writ petition is to direct the 2nd respondent Bank to accept cash security towards amounts due under Ext.P4 notice and release the document pertaining to the immovable property described there under, either to the petitioner or to produce the same in Ext.P3 proceedings without prejudice to the rights and contentions of the petitioner in Ext.P3 proceedings.

2. The facts of the case are that the petitioner had entered into an agreement for sale with the 1st respondent in respect of certain immovable properties. For the specific performance of the said agreement, petitioner has filed OS 245/05, which is now pending before the Sub Court, Ernakulam. In the said suit, where bank is the 2nd defendant, there is a prayer for decree of mandatory direction to the Bank to accept the amount required for clearing the mortgage over the scheduled property with a further direction to produce the title deed and connected documents before the Sub Court. Thus the prayer sought for in this writ petition is identical to the prayer B1

in the plaint, which is mentioned above.

3. Petitioner submits that he is willing to deposit the amount for which Bank has initiated securitisation proceedings in respect of the property in question. But, however, Bank submits that there are several transactions between the Bank and the mortgagor and that as far as the petitioner is concerned, to the Bank, he is a third party and from him Bank is not willing to accept any deposit that is now offered by the petitioner towards the liability of the 1st respondent. This court will not be justified in compelling the Bank, especially in the facts of this case, to accept any payment from the 3rd party and release the document as prayed for in this writ petition. This is all the more for the reason that the 1st respondent, owner of the property, is also opposing the payer made by the petitioner.

4. I am not satisfied that the petitioner has made out a case for interference particularly when the parties are litigating before the Civil Court.

Writ petition fails and is dismissed.

ANTONY DOMINIC, JUDGE.

Rp